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FILED

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CLERK U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

97N  
 DEPUTY

8 IN THE UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 vs.

13 SPARKY'S TRANSMISSION, INC.; CHRIS  
 14 BOEVREE TRUST (02-14-91) and DOES 1  
 THROUGH 10, Inclusive,

15 Defendants.

Case No.:

16 '08 CV 453

JLS (JMA)

CIVIL COMPLAINT

DEMAND FOR JURY TRIAL  
 [F.R.C.P. §38(b);  
 Local Rule 38.1]

17 Plaintiff, KAREL SPIKES (hereinafter referred to as  
 18 "Plaintiff"), file this cause of action against Defendants  
 19 SPARKY'S TRANSMISSION, INC. (hereinafter "SPARKY'S  
 20 TRANSMISSION"), CHRIS BOEVREE TRUST (02-14-91) and DOES 1  
 21 THROUGH 10, Inclusive, and would show unto the Court the  
 22 following:

23 I.

24 JURISDICTION AND VENUE

25 1. This Court has original jurisdiction of this civil  
 26 action pursuant to 28 USC §1331, 28 USC §§1333(a)(3) and  
 27 1333(a)(4) for claims arising under the Americans with  
 28 Disabilities Act of 1990, 42 USC §12101 et seq. and the Court's

CR

1 supplemental jurisdiction, 28 USC §1337.

2       2.     Venue in this Court is proper pursuant to 28 USC  
3 §§1391(b) and (c).

4       3. Pursuant to 28 USC §1337(a), Plaintiff shall assert  
5 all causes of action based on state law, as plead in this  
6 complaint, under the supplemental jurisdiction of the federal  
7 court. All the causes of action based on federal law and those  
8 based on state law, as herein stated, arose from a common nuclei  
9 of operative fact. That is, Plaintiff was denied equal access  
10 to Defendants' facilities, goods, and/or services in violation  
11 of both federal and state laws and/or was injured due to  
12 violations of federal and state access laws. The state actions  
13 of Plaintiff are so related to the federal actions that they  
14 form part of the same case or controversy. The actions would  
15 ordinarily be expected to be tried in one judicial proceeding.

II.

## THE PARTIES

18       4.    Defendant SPARKY'S TRANSMISSION is, and at all times  
19 mentioned herein was, a business or corporation or franchise  
20 organized and existing and/or doing business under the laws of  
21 the State of California.   SPARKY'S TRANSMISSION is located at  
22 8861 La Mesa Boulevard, La Mesa, CA (hereinafter "the subject  
23 property".)   Plaintiff is informed and believes and thereon  
24 alleges that Defendant SPARKY'S TRANSMISSION is, and at all  
25 times mentioned herein was, the owner, lessor or lessee of the  
26 subject property and/or the owner and/or operator of the public  
27 accommodation located at the subject property.

28 5. Defendant CHRIS BOEVREE TRUST (02-14-91) is, and at all

1 times mentioned herein was, a Trust organized, created and/or  
2 existing in and/or doing business under the laws of the State of  
3 California. Plaintiff is informed and believes and thereon  
4 alleges that Defendant CHRIS BOEVREE TRUST (02-14-91) is, and at  
5 all times mentioned herein was, the owner, lessor or lessee of  
6 the subject property.

7 6. Plaintiff is informed and believes, and thereon  
8 alleges, that Defendants and each of them herein were, at all  
9 times relevant to the action, the owners, franchisees, lessees,  
10 general partners, limited partners, agents, employees,  
11 employers, representing partners, subsidiaries, parent  
12 companies, joint venturers and/or divisions of the remaining  
13 Defendants and were acting within the course and scope of that  
14 relationship. Plaintiff is further informed and believes, and  
15 thereon alleges, that each of the Defendants herein gave  
16 consent to, ratified, and/or authorized the acts alleged herein  
17 of each of the remaining Defendants.

18 7. Plaintiff is an otherwise qualified disabled  
19 individual as provided in the Americans with Disabilities Act  
20 of 1990, 42 USC §12102, Part 5.5 of the California Health &  
21 Safety Code and the California Unruh Civil Rights Act, §§51, et  
22 seq., 52, et seq., the California Disabled Persons Act, §§54,  
23 et seq., and other statutory measures which refer to the  
24 protection of the rights of "physically disabled persons."  
25 Plaintiff visited the public accommodation owned and/or  
26 operated by Defendants and/or located at the subject property  
27 for the purpose of availing himself of the goods, services,  
28 facilities, privileges, advantages, or accommodations operated

1 and/or owned by Defendants and/or located on the subject  
2 property.

3       8. Plaintiff is informed and believes and thereon alleges  
4 that the subject facility has been newly constructed and/or  
5 underwent remodeling, repairs, or alterations since 1971, and  
6 that Defendants have failed to comply with California access  
7 standards which applied at the time of each such new  
8 construction and/or alteration.

III.

## FACTS

11 9. Plaintiff has a mobility impairment and uses a  
12 wheelchair. Moreover, he has had a history of or has been  
13 classified as having a physical impairment, as required by 42  
14 USC §12102(2)(A).

15 10. On or about July 10, 2007 and continuing through the  
16 present date, Plaintiff was denied full and equal access to the  
17 facilities owned and/or operated by the Defendants because the  
18 facility and/or subject property were inaccessible to members  
19 of the disabled community who use wheelchairs for mobility.  
20 Plaintiff was denied full and equal access to portions of the  
21 property because of barriers which included, but are not  
22 limited to, inaccessible path of travel, inaccessible cashier  
23 counter, inaccessible restroom facilities and lack of an  
24 accessible parking space, as well as lack of signage for said  
25 space. Plaintiff was also denied full and equal access because  
26 of discriminatory policies and practices regarding  
27 accommodating people with disabilities. Plaintiff filed this  
28 lawsuit to compel compliance with access laws and regulations.

1       11. As a result of Defendants' failure to remove  
2 architectural barriers, Plaintiff suffered injuries. People  
3 with disabilities, because of the existing barriers, are denied  
4 full and equal access to the Defendants' facilities. The ADA  
5 has been in effect for more than 16 years. Given the vast  
6 availability of information about ADA obligations, including  
7 FREE documents which are available from the U.S. Department of  
8 Justice by calling (800) 514-0301 or at the following web  
9 sites: [www.sba.gov/ada/smbusgd.pdf](http://www.sba.gov/ada/smbusgd.pdf), [www.ada.gov/taxpack.pdf](http://www.ada.gov/taxpack.pdf) and  
10 [www.usdoj.gov/crt/ada](http://www.usdoj.gov/crt/ada), the failure of Defendants to comply with  
11 their barrier removal obligations is contemptible.

12       12. Plaintiff is an otherwise qualified individual as  
13 provided in the Americans with Disabilities Act of 1990, 42 USC  
14 §12102, the Rehabilitation Act of 1973, Section 504 (as amended  
15 29 USC §794) and the California Unruh Civil Rights Act, Civil  
16 Code §§51, 52, 54.1, and 54.3, and other statutory measures  
17 which refer to the protection of the rights of "physically  
18 disabled persons." Plaintiff visited the public facilities  
19 owned and operated by Defendants for the purpose of availing  
20 himself of the goods and services offered and provided by  
21 Defendants and/or for the purpose of obtaining removal of  
22 architectural barriers and/or modification of policies,  
23 practices and procedures to provide accessibility to people  
24 with disabilities. Plaintiff was injured in fact, as set forth  
25 more specifically herein.

26       13. Plaintiff alleges that Defendants will continue to  
27 operate public accommodations which are inaccessible to him and  
28 to other individuals with disabilities. Pursuant to 42 USC

1 §12188(a), Defendants are required to remove architectural  
2 barriers to their existing facilities.

3 14. Plaintiff has no adequate remedy at law for the  
4 injuries currently being suffered in that money damages will  
5 not adequately compensate Plaintiff for the amount of harm  
6 suffered as a result of exclusion from participation in the  
7 economic and social life of this state.

8       15. Plaintiff believes that architectural barriers  
9 precluding Plaintiff full and equal access of the public  
10 accommodation will continue to exist at Plaintiff's future  
11 visits, which will result in future discrimination of  
12 Plaintiff, in violation of the Americans with Disabilities Act.  
13 Plaintiff is currently being subjected to discrimination  
14 because Plaintiff cannot make use of and obtain full and equal  
15 access to the facilities, goods and/or services offered by  
16 Defendants to the general public. Plaintiff seeks damages for  
17 each offense relating to each of Plaintiff's visits to the  
18 subject property when Plaintiff was denied full and equal  
19 access to the subject property or was deterred from attempting  
20 to avail himself of the benefits, goods, services, privileges  
21 and advantages of the place of public accommodation at the  
22 subject property because of continuing barriers to full and  
23 equal access.

IV.

FIRST CLAIM FOR  
VIOLATION OF AMERICAN WITH DISABILITIES ACT  
42 USC §12101, et seq.

27 16. Plaintiff re-alleges and incorporates by reference  
28 each and every allegation contained in paragraphs 1 through 15,

1 inclusive, as though set forth fully herein.

2 17. Plaintiff was denied full and equal access to  
3 Defendants' goods, services, facilities, privileges,  
4 advantages, or accommodations within a public accommodation  
5 owned, leased and/or operated by Defendants, in violation of 42  
6 USC §12182(a). Plaintiff was, therefore, subjected to  
7 discrimination and is entitled to injunctive relief pursuant to  
8 42 USC §12188 as a result of the actions or inaction of  
9 Defendants.

10       18. Among other remedies, Plaintiff seeks an injunctive  
11 order requiring compliance with state and federal access laws  
12 for all access violations which exist at the property,  
13 requiring removal of architectural barriers and other relief as  
14 the court may deem proper. Plaintiff also seeks any other  
15 order that will redress the discrimination to which he has been  
16 subjected, is being subjected and/or will be subjected.

v.

SECOND CLAIM FOR  
VIOLATION OF CALIFORNIA CIVIL CODE

20 19. Plaintiff re-alleges and incorporates by reference  
21 each and every allegation contained in paragraphs 1 through 18,  
22 inclusive, as though set forth fully herein.

23       20. Based on the facts plead hereinabove and elsewhere in  
24 this complaint, Defendants did, and continue to, discriminate  
25 against Plaintiff and persons similarly situated by denying  
26 disabled persons full and equal access to and enjoyment of the  
27 subject facilities and of Defendants' goods, services,  
28 facilities, privileges, advantages or accommodations within a

1 public accommodation, in violation of California Civil Code  
2 §§51, et seq., 52, et seq., and 54, et seq.

3       21. Defendants' actions constitute a violation of  
4 Plaintiff's rights under California Civil Code §§51, et seq.,  
5 52, et seq., and 54, et seq. and therefore Plaintiff is  
6 entitled to injunctive relief remedying all such violations of  
7 California access laws and standards. In addition, Plaintiff  
8 is entitled to damages under California Civil Code §54.3 for  
9 each offense. The amount of damages suffered by Plaintiff is  
10 not yet determined. When the amount is ascertained, Plaintiff  
11 will ask the Court for leave to amend this complaint to reflect  
12 this amount. Plaintiff is also entitled to and requests  
13 attorneys' fees and costs.

14       22. The actions of Defendants were and are in violation of  
15 the Unruh Civil Rights Act, California Civil Code §§51, et seq.  
16 and therefore Plaintiff is entitled to injunctive relief  
17 remedying all such violations of California access laws and  
18 standards. In addition, Plaintiff is entitled to damages under  
19 California Civil Code §52 for each offense. The amount of  
20 damages suffered by Plaintiff is not yet determined. When the  
21 amount is ascertained, Plaintiff will ask the Court for leave  
22 to amend this complaint to reflect this amount.

23       23. Plaintiff seeks all of the relief available to him  
24 under Civil Code §§51, 52 et seq., 54, 54.1, 54.2, 54.3, and  
25 any other Civil Code Sections which provide relief for the  
26 discrimination suffered by Plaintiff, including damages and  
27 attorneys fees.

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VI.

THIRD CLAIM FOR  
VIOLATION OF HEALTH AND  
SAFETY CODE \$19950, ET SEQ.

5 24. Plaintiff re-alleges and incorporates by reference  
6 each and every allegation contained in paragraphs 1 through 23,  
7 inclusive, as though set forth fully herein.

8       25. Defendants' facilities are public accommodations  
9 within the meaning of Health and Safety Code §19950, et seq.,  
10 and Plaintiff is informed and believes and thereon alleges that  
11 Defendants have newly built or altered the subject property  
12 and/or the subject facility since 1971 within the meaning of  
13 California Health and Safety Code §19959. The aforementioned  
14 acts and omissions of Defendants constitute a denial of equal  
15 access to the use and enjoyment of the Defendants' facilities  
16 by people with disabilities.

17 26. Defendants' failure to fulfill their duties to provide  
18 full and equal access to their facilities by people with  
19 disabilities has caused Plaintiff to suffer deprivation of  
20 Plaintiff's civil rights, as well as other injuries.

21       27. As a result of Defendants' violations of Health and  
22 Safety Code §§19955, et seq., described herein, Plaintiff is  
23 entitled to and requests injunctive relief pursuant to Health  
24 and Safety Code §§19953, and to reasonable attorney's fees and  
25 costs.

VII.

**FOURTH CLAIM FOR DECLARATORY RELIEF**

28. Plaintiff re-alleges and incorporates by reference

1 each and every allegation contained in paragraphs 1 through 27,  
2 inclusive, as though set forth fully herein.

3 29. An actual controversy now exists in that Plaintiff is  
4 informed and believes and thereon alleges that Defendants'  
5 premises are in violation of the disabled access laws of the  
6 State of California including, but not limited to, Civil Code  
7 §§51, et seq., §§52, et seq., §§54, et seq., Health and Safety  
8 Code §§19950, et seq., Government Code §§4450, et seq. and  
9 7250, et seq., Title 24 of the California Code of Regulations,  
10 and/or Title III of the Americans with Disabilities Act and its  
11 implementing Accessibility Regulations.

12       30. A declaratory judgment is necessary and appropriate at  
13 this time so that each of the parties may know their respective  
14 rights and duties and act accordingly.

VIII.

**FIFTH CLAIM FOR INJUNCTIVE RELIEF**

17       31. Plaintiff re-alleges and incorporates by reference  
18 each and every allegation contained in paragraphs 1 through 30,  
19 inclusive, as though set forth fully herein.

20       32. Plaintiff will suffer irreparable harm unless  
21 Defendants are ordered to remove architectural barriers at  
22 Defendants' public accommodation, and/or to modify their  
23 policies and practices regarding accommodating people with  
24 disabilities. Plaintiff has no adequate remedy at law to  
25 redress the discriminatory conduct of Defendants.

26       33. Plaintiff seeks injunctive relief to redress  
27 Plaintiff's injuries.

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IX.

## JURY DEMAND

5       34. Pursuant to Rule 38 of the Federal Rules of Civil  
6 Procedure, Plaintiffs hereby request a jury trial.

7 WHEREFORE, Plaintiff prays for judgment against the  
8 Defendants, SPARKY'S TRANSMISSION, INC., CHRIS BOEVREE TRUST  
9 (02-14-91) and DOES 1 through 10, as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act, the Unruh Civil Rights Act and the Disabled Persons Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under that section;
2. That the Court declare the respective rights and duties of Plaintiff and Defendants as to the removal of architectural barriers at Defendants' public accommodations;
3. An order awarding Plaintiff actual, special and/or statutory damages for violation of his civil rights and for restitution including, but not limited to, damages pursuant to the applicable Civil Code Sections including, but not limited to, §§52 and 54.3 for each and every offense of Civil Code §§51 and 54;
4. An award of compensatory damages according to proof;
5. An award of up to three times the amount of actual damages pursuant to the Unruh Civil

1 Rights Act and the Disabled Persons Act; and

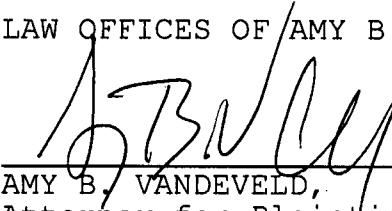
2 6. An order awarding Plaintiff reasonable attorneys' fees  
3 and costs;

4 7. Such other and further relief as the Court deems  
5 proper.

6 DATED:

7 3/7/08

8 LAW OFFICES OF AMY B. VANDEVELD

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AMY B. VANDEVELD,  
Attorney for Plaintiff

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**UNITED STATES  
DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

**# 148665 - SH  
\* \* C O P Y \* \*  
March 11, 2008  
14:45:49**

**Civ Fil Non-Pris**  
USAO #: 08CV0453  
Judge.: JANIS L. SAMMARTINO  
Amount.: \$350.00 CK  
Check#: BC3355

**Total-> \$350.00**

**FROM: APIKES V. SPARKY'S TRANSMISSIO**

IS44

(Rev. 07/99)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

KAREL SPIKES,

## (a) PLAINTIFFS

San Diego

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

SPARKY'S TRANSMISSION, INC.;  
CHRIS BOEVREE TRUST (02-14-91)  
and DOES 1 THROUGH 10,  
Inclusive,

08 MAR 11 PM 2:41 11/08

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT, U.S. DISTRICT COURT  
(IN U.S. PLAINTIFF CASES ONLY) SOUTHERN DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

R.V.

DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Amy B. Vandeveld, Esq.  
LAW OFFICES OF AMY B. VANDEVELD  
1850 Fifth Avenue, Suite 22  
San Diego, CA 92101 (619) 231-8883

ATTORNEYS (IF KNOWN) 08 CV 453 JLS (JMA)

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- U.S. Government Plaintiff  3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (For Diversity Cases Only)			
PT	DEF	PT	DEF
Citizen of This State	<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12111, 11281-12184 and 12201 et. seq.

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
• 110 Insurance	PERSONAL INJURY	PERSONAL INJURY		
• 120 Marine	310 Airplane	• 362 Personal Injury - Medical Malpractice	422 Appeal 28 USC 158	400 State Reappointment
• 130 Miller Act	315 Airplane Product Liability	• 365 Personal Injury - Product Liability	423 Withdrawal 28 USC 147	410 Antitrust
• 140 Negotiable Instrument	320 Assault, Libel & Slander	• 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	430 Banks and Banking
• 150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	• 370 Other Fraud	• 420 Copyrights	450 Commerce/ICC Rates/etc.
• 151 Medicare Act	340 Marine	• 371 Truth in Lending	• 430 Patent	460 Deportation
• 152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	• 380 Other Personal Property Damage	• 440 Trademark	470 Racketeer Influenced and Corrupt Organizations
• 153 Recovery of Overpayment of Veterans Benefits	350 Motor Vehicle	• 385 Property Damage Product Liability	SOCIAL SECURITY	• 480 Selective Service
• 160 Stockholders Suits	355 Motor Vehicle Product Liability		• 461 HIA (13958)	• 490 Securities/Commodities Exchange
• 190 Other Contract	360 Other Personal Injury		• 462 Black Lung (923)	• 475 Customer Challenge 12 USC
• 195 Contract Product Liability			• 463 DIWC/DIWV (405(g))	• 491 Agricultural Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	• 464 SSID Title XVI	• 492 Economic Stabilization Act
• 210 Land Condemnation	• 441 Voting	• 510 Motions to Vacate Sentence	• 465 RSI (405(e))	• 493 Environmental Matters
• 220 Foreclosure	• 442 Employment	Habeas Corpus	• 470 Taxes (U.S. Plaintiff or Defendant)	• 494 Energy Allocation Act
• 230 Rent Lease & Ejectment	• 443 Housing/Accommodations	• 530 General	• 471 Railway Labor Act	• 495 Freedom of Information Act
• 240 Tort to Land	• 444 Welfare	• 535 Death Penalty	• 790 Other Labor Litigation	• 496 Appeal of Fee Determination Under Equal Access to Justice
• 245 Tort Product Liability	• 446 Other Civil Rights	• 540 Mandamus & Other	• 791 Empl. Ret. Inc.	• 497 Constitutionality of State
• 250 All Other Real Property		• 550 Civil Rights	Security Act	• 498 Other Statutory Actions
		• 555 Prisoner Conditions		

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

X Original Proceeding     2 Removal from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMANDS TO BE DETERMINED AT TRIAL  
Check YES only if demanded in complaint:  
JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE 3/7/08

SAC 148645 #350 3/11/08